

## **REMARKS**

Applicants express appreciation to the Examiner for consideration of the subject patent application. This Response is in reply to the Office Action mailed June 30, 2008.

Claims 1-84 were pending and were rejected. Claims 29-35 and 69-76 have been canceled herein without prejudice. Claims 1-28, 36-68 and 77-84 remain in the application.

### **Claim Rejections - 35 U.S.C. § 102**

Claims 1, 2, 4, 5, 8, 10, 11, 13, 15-19, 27, 29, 31, 32, 34, 35, 36, 41, 42-59, 61, 62, 64, 69, 77 and 78 (including independent claims 1, 29, 36, 42, 46, 50, 54, 59, 69 and 77) were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. 4,282,880 ("Gardineer").

Claims 29-35 and 69-76 have been canceled, rendering the rejections directed to those claims moot.

In order to most succinctly explain why the claims presented herein are allowable, Applicants will direct the following remarks primarily to the originally presented independent claims 1, 36, 42, 46, 50, 54, 59 and 77, with the understanding that once an independent claim is allowable, all claims depending therefrom are allowable.

Applicants respectfully traverse these rejections on the basis that Gardineer does not teach (or suggest) all of the limitations of the rejected independent claims.

Specifically, with regard to independent claims 1 and 59, claim 1 includes the limitations of: "[a] table and [a] bath being linearly vertically displaceable with respect to

one another between 1) a lowered position where the table is adjacent the bath configured to position the breast within the bath, and 2) a raised position where the table is spaced-above the bath configured to elevate the breast above the bath . . . .”

Claim 59 includes the limitation of “linearly vertically displacing the table and a bath of medium with respect to one another to immerse the breast into the medium . . . .”

Thus, each of these claims requires the limitation that the bath and the table are vertically displaceable relative to one another (e.g., the vertical spacing between the two is increased or decreased as a result of relative movement of the two).

The Gardineer reference does not teach or suggest this aspect. The Gardineer reference and the Mezrich reference teach tables for which a vertical height can be adjusted via adjustable feet. As the height of the tables is adjusted, all components of the tables are adjusted at the same time: there is no provision to adjust different components relative to one another.

With regard to independent claim 36, claim 36 requires the limitation of “means for securing the breast within the bath.” This limitation is neither taught nor suggested by Gardineer: nor is it taught or suggested by any other references of record.

With regard to independent claim 42, claim 42 requires the limitation of “a plurality of table inserts, each insertable into the table and each having a different sized aperture formed therein.” This limitation is neither taught nor suggested by Gardineer: nor is it taught or suggested by any other references of record.

With regard to independent claim 46, claim 46 requires the limitation of "an annular projection, formed around the aperture in the table, and extending beyond a lower surface of the table." This limitation is neither taught nor suggested by Gardineer: nor is it taught or suggested by any other references of record.

With regard to independent claim 50, claim 50 includes the limitations of: "a table, disposable over the bath, configured to receive the patient thereon, having an aperture formed in the table and positionable over the bath configured to receive the breast of the patient pendent therethrough; and a counter-bore, formed in a lower surface of the table around the aperture, sized to receive an upper portion of the bath when the table is in the lowered position." This limitation is neither taught nor suggested by Gardineer: nor is it taught or suggested by any other references of record.

With regard to independent claim 54, claim 54 includes the limitations of "c) a table, disposable over the bath, configured to receive the patient thereon, having an aperture formed in the table and positionable over the bath configured to receive the breast of the patient pendent therethrough; and d) an annular channel, disposed around an upper edge of the bath." This limitation is neither taught nor suggested by Gardineer: nor is it taught or suggested by any other references of record.

With regard to independent claim 77, claim 77 includes the limitations of "a) securing a breast magnet to the breast; . . . [and] d) securing the breast within the bath . . . ." This limitation is neither taught nor suggested by Gardineer: nor is it taught or

suggested by any other references of record.

With regard to independent claim 84, claim 84 includes the limitation of: "d) initially more rapidly scanning a larger length of the breast with ultrasound signals from transducer arrays to identify an area of interest in the breast; and e) subsequently more slowly scanning a smaller length of the breast around the area of interest with ultrasound signals from the transducer arrays." This limitation is neither taught nor suggested by Gardineer: nor is it taught or suggested by any other references of record.

Applicants respectfully submit that the subject matter of each independent claim discussed above is not found in the Gardineer reference: as such, the rejections under 35 U.S.C. § 102 are improper. Applicants respectfully request that they be withdrawn.

#### **Claim Rejections - 35 U.S.C. § 103**

Claims 3, 9, 12, 14, 20-26, 28, 30, 33, 37-40, 60,63-66, 68, 70, 71, 74 and 79-84 stand rejected under 35 U.S.C. 103(a) as being (including independent claim 84) were rejected under 35 U.S.C. § 103 as being unpatentable over Gardineer in view of Mezrich. Except for claim 84, each of these claims depend from an otherwise allowable independent claim. As such, Applicants will direct the following comments to the rejection of claim 84.

Claim 84 includes the limitation of "d) initially more rapidly scanning a larger length of the breast with ultrasound signals from transducer arrays to identify an area of

interest in the breast; and e) subsequently more slowly scanning a smaller length of the breast around the area of interest with ultrasound signals from the transducer arrays.”

While it was not made clear in the Office Action which of the references of record were relied upon to reject claim 84, it was alleged in the Office Action that “[i]t would be obvious to one of ordinary skill in the art that the level and/or speed at which the table is lowered and raised can be modified as determine and desired by a user for a specific patient.” For purposes of these arguments, Applicants assume this statement is directed to the elements of claim 84.

Applicants respectfully traverse this rejection. While Applicants are confident that the Examiner is well acquainted with the requirements necessary to establish a *prima facie* case of obviousness, it is thought prudent to briefly review the required elements. Specifically, in order to meet the burden of establishing a *prima facie* case of obvious, the Patent Office must show that: 1) each and every element of the invention as set forth in the claims is taught or suggested by the reference as modified; 2) that there is sufficient motivation contained in the reference itself or the knowledge of one of ordinary skill in the reference to modify or combine the reference; and 3) that one of ordinary skill in the art would find a sufficient likelihood of successfully making the modification or combination asserted.

Applicants respectfully submit that these requirements have not been satisfied by the asserted rejection. As the limitations of elements e) and f) of claim 84 are never addressed by either of the Gardineer or Mezrich references, a *prima facie* case of obviousness has not been established: as such, this rejection is improper and it is respectfully requested that it be withdrawn.

With regard to the dependent claims not specifically addressed above, Applicants respectfully submit that a prima facie case of obviousness has not been established in the Office Action by blanket statements such as: “[i]t would be obvious to one of ordinary skill in the art that the level and/or speed at which the table is lowered and raised can be modified as determine and desired by a user for a specific patient,” and “[i]t would also be obvious to one of ordinary skill in the art to try utilizing a magnet system as a means for securing the breast in the bath since there are a finite number of ways in which to secure.” These types of statements are not properly used in rejecting claims under 35 U.S.C. § 103.

Applicants respectfully note that none of the claims have been amended herein, and that no new information is submitted herewith. As such, Applicants believe that any subsequent action issued by the Office should not be made final, except to the extent such action is a Notice of Allowance.

### **CONCLUSION**

In light of the above, Applicants respectfully submits that pending claims 1-28, 36-68 and 77-84 are in condition for allowance. Therefore, Applicants request that the rejections and objections be withdrawn, and that the claims be allowed and passed to issue. If any impediment to the allowance of these claims remains after entry of this Response, the Examiner is strongly encouraged to call the undersigned at (801) 566-6633 so that such matters may be resolved as expeditiously as possible.

It is believed that no fee is due herewith. However, the Commissioner is hereby authorized to charge any required fee, or to credit any overpayment, in connection with this Response to Deposit Account No. 20-0100.

DATED this 29<sup>th</sup> day of September, 2008.

Respectfully submitted,

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